

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Jasper J. Tucker

Application No. 10/666,028

Filed: September 17, 2003

Confirmation No. 7932

For: TRACKED VEHICLE WITH IMPROVED
TRACK DRIVE UNIT

Examiner: Avraham H. Lerner

Art Unit: 3611

Attorney Reference No. 1850-65160-01

CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP AMENDMENT COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on the date shown below.

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for Applicant

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TRANSMITTAL LETTER

Enclosed for filing in the application referenced above are the following:

- Amendment
- Please charge any additional fees that may be required in connection with filing this amendment and any extension of time, or credit any overpayment, to Deposit Account No. 02-4550. A copy of this sheet is enclosed.
- Please return the enclosed postcard to confirm that the items listed above have been received.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By

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AMENDMENT

In response to the Patent Office action dated August 25, 2004, Applicant responds as follows:

Restriction Requirement

In response to the Requirement for Restriction between the allegedly separate and distinct inventions I-IV, Applicant elects the claims 1-37 of Group I directed to a drive track unit for track-driven all-terrain vehicle for examination in this application. Applicant reserves the right to file divisional applications directed to the alleged separate and distinct inventions of the claims of Groups II, III, and IV.

Election of Species

Applicant traverses the requirement for election of species because the claims presented in the application as filed do not include claims to "two or more independent and distinct

inventions... in one application," as required by 35 U.S.C. § 121 for the Patent Office to require an election between species. In this regard, all claims currently pending are either generic to the species of Figs. 5 and 5A, or are specific to the species of Fig. 5A only. Only the pending claims 12, 13, 14, 17, 18, 33, 34, 37, 42, 43, 71, and 72 are directed specifically to the species of Fig. 5A. All other claims of the application are generic to the species of both Figs. 5 and 5A. Accordingly, the requirement for election of species is improper and should be withdrawn.

Applicant also traverses the requirement for election of species because, for such a requirement to be proper where there is a disclosed relationship between species, such relationship must be discussed and reasons given by the Examiner leading to the conclusion that such relationship does not prevent an election requirement. See MPEP § 808.01(a). The specification of the application clearly discloses a relationship between the species of Figs. 5 and 5A. In this regard, the relationship between the embodiments Figs. 5 and 5A, and the advantages of the embodiment of Fig. 5A over the embodiment of Fig. 5 where an exceptionally wide drive belt is required, is discussed fully under the heading "Alternative Preferred Embodiment" beginning on page 12 and continuing through line 26 of page 13. Such relationship is further discussed on page 9 of the specification at lines 23-25.

A further reason why the requirement for election of species is improper in this case is because an election requirement under 37 C.F.R. §1.146 is proper only where there are no claims to the generic invention (also see MPEP § 809.02(b)), and there are claims to more than one patentably distinct species, which is not the case here.

Applicant provisionally elects the species of Fig. 5 for examination in this application if the above traverse is not accepted. Claims readable on the species of Fig. 5 include all of claims 1-72 of the application as filed, except the aforementioned claims 12-14, 17-18, 33-34, 37, 42-43, and 71-72, which are, by their terms, limited to the species of Fig. 5A.

In summary, the requirement for election of species should be withdrawn because (1) there are allowable generic claims that encompass both species, and (2) there are not claims specifically directed to each of the two or more separate and distinct species as required.

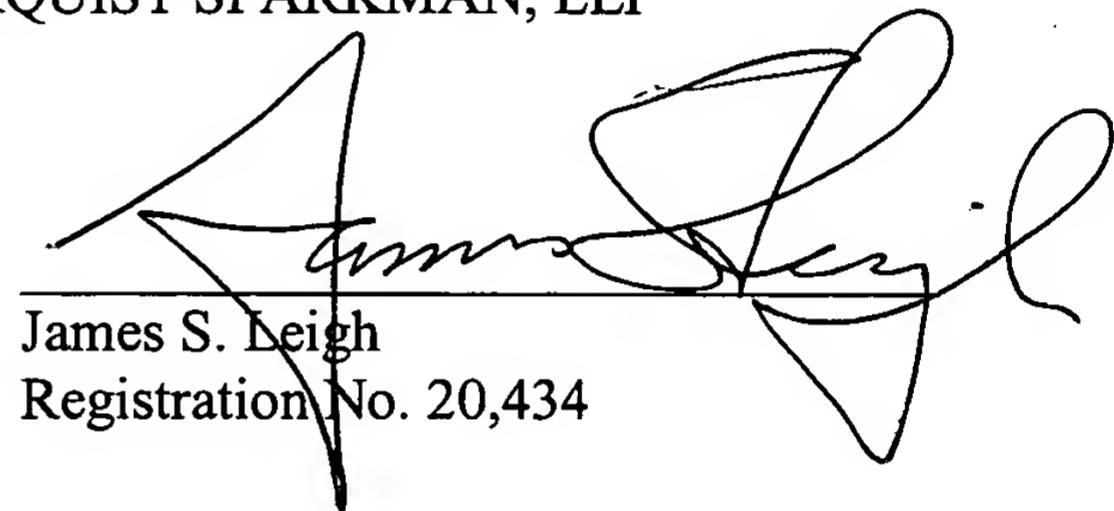
Applicant respectfully requests the withdrawal of the requirement for an election of species and requests restriction of the examination of the application to claims 1-37 of Group I in this application, reserving the right to file divisional applications to the other groups of claims II-IV.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By

James S. Leigh
Registration No. 20,434

A handwritten signature in black ink, appearing to read "James S. Leigh", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized 'J' at the beginning.

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